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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 MARKEIN O. VERNON,
12
13 Plaintiff,
14 v.
15 J. LARIOS,
16 Defendant.

Case No. 5:22-cv-01457-SSS (MAA)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE**

17
18 This Report and Recommendation is submitted to the Honorable Sunshine
19 Suzanne Sykes pursuant to the provisions of 28 U.S.C. § 636 and General Order 05-
20 07 of the United States District Court for the Central District of California.
21

22 **I. INTRODUCTION**

23 On August 18, 2022, Plaintiff Markein O. Vernon (“Plaintiff”), a California
24 state inmate, filed a *pro se* Complaint alleging violations of his civil rights pursuant
25 to 42 U.S.C. § 1983. (Compl., ECF No. 1.) On August 29, 2022, District Judge
26 Sykes granted Plaintiff’s Request to Proceed *In Forma Pauperis* (“IFP”). (ECF
27 Nos. 2, 5.) After the Court screened and dismissed the Complaint (“Order
28 Screening Complaint,” ECF No. 6), Plaintiff filed a First Amended Complaint

1 (“FAC”) on September 28, 2022. (FAC, ECF No. 14.) Upon review of the FAC,
 2 the Court determined that it could be served upon the sole remaining defendant M.
 3 Larios (“Defendant”) and ordered it served upon Defendant (“Service Order”).
 4 (Service Order, ECF No. 17.)

5 Before the Court are three motions filed by Defendant on December 29,
 6 2022: (1) a Motion to Dismiss Without Prejudice or to Transfer Case for Improper
 7 Venue (“Motion to Dismiss,” ECF No. 27), to which Plaintiff did not file an
 8 Opposition; (2) a Request for Screening (Req. for Screen., ECF No. 28), to which
 9 Plaintiff did not file an Opposition; and (3) a Request for Oral Argument (Req. for
 10 Oral Arg., ECF No. 29), to which Plaintiff filed an Opposition (Opp’n to Req. for
 11 Oral Arg., ECF No. 34).

12 The Court finds this matter suitable for decision without oral argument, *see*
 13 Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15—particularly in light of Plaintiff’s lack
 14 of opposition to the Motion to Dismiss and Request for Screening—and **DENIES**
 15 the Request for Oral Argument. For the reasons below, the Court **DENIES** the
 16 Request for Screening, and recommends that the District Court **GRANT IN PART**
 17 **AND DENY IN PART** the Motion to Dismiss and transfer this lawsuit to the
 18 Southern District of California.

19 20 **II. REQUEST FOR SCREENING**

21 In the Request for Screening, Defendant asserts that the FAC has not been
 22 screened by any court and requests that the Court or the assigned court in the
 23 Southern District of California—if the case is transferred per the Motion to
 24 Dismiss—screen the FAC pursuant to 28 U.S.C. §1915A (“Section 1915A”). (*See*
 25 *generally* Req. for Screen.)

26 Certain provisions of the Prison Litigation Reform Act of 1995—codified in
 27 Section 1915A and 28 U.S.C. § Section 1915(e)(2) (“Section 1915(e)(2)”)—require
 28 courts to *sua sponte* conduct a preliminary screening of any civil action brought by

1 a prisoner, or in which a plaintiff proceeds IFP, and dismiss any claim that is
 2 frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks
 3 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.
 4 §§ 1915(e)(2), 1915A(b); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000)
 5 (en banc) (noting that Section 1915(e)(2) “not only permits but requires” district
 6 courts to dismiss, *sua sponte*, “an in forma pauperis complaint that fails to state a
 7 claim”); *Resnick v. Hayes*, 213 F.3d 443, 446–47, 449 n.2 (9th Cir. 2000) (noting
 8 screening obligation under Section 1915A).

9 The Court is fully cognizant of its obligations under Section 1915A(b) and
 10 Section 1915(e)(2), and *sua sponte* screens every civil complaint (original and
 11 amended) filed by prisoners and IFP litigants prior to ordering service upon any
 12 defendant. In this lawsuit, the Court screened the original Complaint with leave to
 13 amend. (*See* Order Screen. Compl.) When Plaintiff filed the FAC, the Court
 14 reviewed the FAC and determined that it could be served upon Defendant. (Service
 15 Order 1.)¹ Defendant’s Request for Screening is asking the Court to redo
 16 something it already has done and would end in the same conclusion.

17 Moreover, Defendant provides no legal basis for its Request for Screening,
 18 and the Court is not aware of any. Indeed, courts have rejected the propriety of
 19 such a motion. *See, e.g., Brooks v. Alameida*, No. 04-2059 H (JFS), 2005 U.S. Dist.
 20 LEXIS 64683, at *2, *17 (S.D. Cal. Sep. 6, 2005) (in response to Defendants’ filing
 21 of Request for Screening, ordering Defendants to appear before the Court to show
 22 cause why, *inter alia*, sanctions should not be imposed against Defendants for filing
 23 an unauthorized pleading for the purpose of causing unnecessary delay, in violation
 24 of Federal Rule of Civil Procedure 11(b)(1), and holding that a Request for
 25 Screening is “not authorized by 28 U.S.C. § 1915(e)(2) and § 1915A(b)”; *Freeman*
 26 *v. Lee*, 30 F. Supp. 2d 52, 56 (D.D.C. 1998) (explaining that “a mere reading of 28

27 _____
 28 ¹ Where docketed documents do not have numbered paragraphs, pinpoint citations
 are to the page numbers in the CM/ECF-generated headers.

1 U.S.C. § 1915A dispels any notion that it provides a basis for governmental
 2 defendants to seek a dismissal or to otherwise play a role in the screening process”
 3 and that “Section 1915(e) neither states nor suggests that its provisions provide a
 4 basis for governmental defendants to seek a dismissal”).

5 Defendant’s Request for Screening is **DENIED**.

6 7 **III. MOTION TO DISMISS**

8 **A. The Motion**

9 Defendant moves for an order dismissing this action on the grounds that
 10 venue is improper, or in the alternative, to transfer the venue of the entire action to
 11 the United States District Court for the Southern District of California. (Mot. to
 12 Dismiss 1–2.)

13 **B. Legal Standard**

14 Federal Rule of Civil Procedure (“Rule”) 12(b)(3) provides that a party may
 15 move to dismiss a case for “improper venue.” When the propriety of venue is
 16 challenged by a Rule 12(b)(3) motion, Plaintiff bears the burden of establishing
 17 proper venue. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496
 18 (9th Cir. 1979). When considering a motion to dismiss for improper venue, a court
 19 need not accept the pleadings as true and may consider facts outside of the
 20 pleadings. *Doe I v. AOL, LLC*, 552 F.3d 1077, 1081 (9th Cir. 2009).

21 “When venue is challenged, the court must determine whether the case falls
 22 within one of the three categories set out in §1391(b). If it does, venue is proper; if
 23 it does not, venue is improper, and the case must be dismissed or transferred under
 24 §1406(a).” *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 56 (2013). The
 25 general federal venue statute, 28 U.S.C. § 1391(b) (“Section 1391(b)”), states that a
 26 civil action may be brought in one of three judicial districts: *first*, “a judicial district
 27 in which any defendant resides, if all defendants are residents of the State in which
 28 the district is located,” 28 U.S.C. § 1391(b)(1); *second*, “a judicial district in which

1 a substantial part of the events or omissions giving rise to the claim occurred, or a
 2 substantial part of property that is the subject of the action is situated,” 28 U.S.C.
 3 § 1391(b)(2); or *third*, “if there is not a proper district under the first two
 4 provisions, any judicial district in which any defendant is subject to the court’s
 5 personal jurisdiction with respect to such action,” 28 U.S.C. § 1391(b)(3).

6 28 U.S.C. § 1406(a) (“Section 1406(a)”) provides that “[t]he district court of
 7 a district in which is filed a case laying venue in the wrong division or district shall
 8 dismiss, or if it be in the interest of justice, transfer such case to any district or
 9 division in which it could have been brought.” “Assuming timely and sufficient
 10 objection to improper venue, transfer *or* dismissal is *mandatory*.” Judge Virginia
 11 A. Phillips & Judge Karen L. Stevenson, *Rutter Group Practice Guide: Federal*
 12 *Civil Procedure Before Trial, California & 9th Circuit Editions* § 4:576 (Apr. 2022
 13 update). However, whether to dismiss an action for improper venue, or
 14 alternatively to transfer venue to a proper court, is within the discretion of the
 15 district court. *See King v. Russell*, 963 F.2d 1301, 1304 (9th Cir. 1992). A
 16 dismissal for improper venue must be without prejudice. *See In re Hall, Bayoutree*
 17 *Assocs.*, 939 F.2d 802, 804 (9th Cir. 1991).

18 **C. Discussion**

19 Defendant argues that venue in the Central District of California is improper
 20 because the sole Defendant resides in the geographical jurisdiction of the Southern
 21 District of California and the events giving rise to this lawsuit occurred in the
 22 Southern District of California. (Mot. to Dismiss 2.) The Motion to Dismiss is
 23 unopposed.

24 Here, the Central District of California does not satisfy any category of
 25 Section 1391(b). As to Section 1391(b)(1) (the judicial district where any
 26 defendant resides), the sole remaining Defendant resides in San Diego County. (M.
 27 Larios Decl. ¶ 2–3, ECF No. 27-1.) As to Section 1391(b)(2) (the judicial district in
 28 which a substantial part of the events or omissions giving rise to the claim

1 occurred), all the events in this lawsuit occurred at Richard J. Donovan Correctional
2 Facility (*see generally* FAC), which is in San Diego County. *See* Facility Locator:
3 Richard J. Donovan Correctional Facility (RJD), California Department of
4 Corrections and Rehabilitation, <https://www.cdcr.ca.gov/facility-locator/rjd/>; Fed.
5 R. Evid. 201(b)(2) (“The court may judicially notice a fact that is not subject to
6 reasonable dispute because it . . . can be accurately and readily determined from
7 sources whose accuracy cannot reasonably be questioned.”); *Calvary Chapel of*
8 *Ukiah v. Newsom*, 524 F. Supp. 3d 986, 1007 n.7–8 (E.D. Cal. 2021) (taking
9 judicial notice of government websites). San Diego County—where Defendant
10 resides and all the underlying events occurred—is in the Southern District of
11 California. *See* 28 U.S.C. § 84(d). There is no basis for venue in the Central
12 District of California under Section 1391(b).

13 As venue is improper, the Court must determine whether to recommend
14 dismissal or transfer “in the interest of justice.” *See* 28 U.S.C. § 1406(a).
15 Defendant argues that the case should be dismissed because “the sole Defendant in
16 this matter resides in the Southern District, and Plaintiff’s allegations arose while he
17 was housed at RJD, also located in the Southern District. Yet Plaintiff chose to file
18 this action in Central District, subjecting the Defendant and this Court to undue
19 burden.” (Mot. to Dismiss 5.)

20 The Ninth Circuit generally takes a “broad view of when transfer is
21 appropriate, recognizing that ‘[n]ormally transfer will be in the interest of justice
22 because normally dismissal of an action that could be brought elsewhere is ‘time-
23 consuming and justice-defeating.’” *Amity Rubberized Pen Co. v. Mkt. Quest Grp.*,
24 *Inc.*, 793 F.3d 991, 996 (9th Cir. 2015) (quoting *Miller v. Hambrick*, 905 F.2d 259,
25 262 (9th Cir. 1990)). “[T]ransfer will generally be in the interest of justice, unless it
26 is apparent that the matter to be transferred is frivolous or was filed in bad faith.”
27 *Id.* The Ninth Circuit has “rarely found that transfer would not serve the interest of
28 justice.” *Id.*

Here, Plaintiff currently is—and was when he initially filed this lawsuit—housed at California Institute for Men, in Chino, California (Compl. 2; FAC 2) in San Bernardino County. *See* City Information, The City of Chino, <https://www.cityofchino.org/452/City-Information>; Fed. R. Evid. 201(b)(2). San Bernardino County is in the Central District of California. 28 U.S.C. § 84(c)(1). Courts in the Ninth Circuit “ordinarily find transfer to be in the interest of justice where, as here, the plaintiff[] appear[s] to have been ‘unaware of or confused about the proper forum in which to file [his] action.’” *Munns v. Kerry*, 782 F.3d 402, 415 (9th Cir. 2015) (quoting *Puri v. Gonzales*, 464 F.3d 1038, 1043 (9th Cir. 2006)); *see also Amity*, 793 F.3d at 996 (“[T]ransfer will often serve as a means to prevent the injustice of penalizing a party for an honest procedural mistake.”). The Court concludes that transfer to the Southern District of California is in the interest of justice.

IV. RECOMMENDATION

Consistent with the foregoing, **IT IS RECOMMENDED** that the District Court issue an Order:

1. Accepting this Report and Recommendation;
2. Granting in part and denying in part the Motion to Dismiss as follows:
 - a. Denying the request to dismiss the lawsuit for improper venue; and
 - b. Granting the alternative request to transfer the lawsuit to the Southern District of California; and
3. Directing the clerk to transfer the case to the Southern District of California.

DATED: March 23, 2023


 MARIA A. AUDERO
 UNITED STATES MAGISTRATE JUDGE